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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Honorable John D. Dingell
Chairman, Committee on
Energy & Commerce
House of Representatives
2125 Rayburn Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of November 15 to then Chairman James Quello concerning the Commission's Notice of Proposed Rule Making (Notice) in PP Docket No. 93-253, to implement the competitive bidding provisions of the Omnibus Budget Reconciliation Act of 1993 (Budget Act). As you requested, a copy of your letter has been included in the docket of this proceeding and is available to the public.

In your letter you raised two concerns. First, you argued that the proposal in the Notice regarding "intermediate links" is contrary to Congressional intent. Intermediate links are radio links that are used as part of a larger communications network, such as a point-to-point microwave service used to link a cell site in a cellular system to a mobile telephone switching office. The Budget Act requires that competitive bidding can only be used for spectrum-based services that enable subscribers "to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or enable those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate." As you noted in your letter, however, paragraph 29 of the Notice proposed that "licenses used in services as an intermediate link in the provision of a continuous, end-to-end service to a subscriber ... be subject to competitive bidding." Many comments on the Notice agree with your interpretation of the legislation that spectrum used to provide intermediate links should not be subject to auction, and we will be taking up this question shortly.

Second, you were concerned that the limited discussion in the Notice of the pending Big LEO applications (paragraph 155) indicates that the Commission misunderstood the Congressional intent with regard to avoiding mutual exclusivity in pending licensing proceedings. Let me assure you that in a Negotiated Rulemaking conducted last year, the Commission made every effort to reach a mutually acceptable compromise among the six pending Big LEO applicants. Currently, Commission staff is considering two sharing proposals submitted by two groups of LEO applicants, and we are hopeful the mutual exclusivity can be resolved.

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Honorable John D. Dingell

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While I do not wish to prejudge the Commission's decision on this issue, I appreciate your guidance in interpreting the legislation which the Notice seeks to implement, and am confident that your input will be carefully considered in the Commission's deliberations. Thank you again for your letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Reed E. Hundt', with a long horizontal flourish extending to the right.

Reed E. Hundt
Chairman

P.S. Thanks for the very
fine photo - my
Michigan grandmother
will be thrilled!
Ken

CHAIRMAN'S CONGRESSIONAL REPLY COVER SHEET

FCC Control #: 9304629

Due Date:

Senate/House: [X]

Subcommittee Member: []

Incoming: Honorable John D. Dingell

Subject: Spectrum auction rule making proceeding

Background: Chairman Dingell has provided his personal views concerning how the Commission should implement the provisions of the Budget Act of 1993 concerning competitive bidding. A copy of his letter has been included in the docket of the competitive bidding proceeding.

Outgoing: The response acknowledges his concerns about the proposals in the NPRM that (1) licenses used as intermediate links in the subscriber based services be subject to auction, and (2) that Big LEOs might be subject to auction.

Bureau: Office of Plans and Policy (OPP)

Surname & Div./Br.	Prepared by	Cleared by	Cleared by	Cleared by	Cleared by
Initials & date	Kwerel/OPP	PEPPER/OPP			
	ER 12/2/93	TRP 12/2/93			

OLA/Chairman's Office

Initials & date	Cleared by	Cleared by	Cleared by	Cleared by	Cleared by
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U.S. House of Representatives
 Committee on Energy and Commerce
 Room 2125, Rayburn House Office Building
 Washington, DC 20515-6115

November 15, 1993

The Honorable James H. Quello
 Chairman
 Federal Communications Commission
 1919 M Street, N.W.
 Washington, D.C. 20554

Dear Mr. Chairman:

I am writing in response to the Commission's Notice of Proposed Rule Making in PP Docket No. 93-253, which requests comments pertaining to the establishment of competitive bidding procedures to choose among mutually exclusive applications of initial licenses.

As you are well aware, this particular rulemaking is of critical importance, inasmuch as it will establish the ground rules for a new method of awarding radio licenses. I commend the Commission for moving forward on this Notice so expeditiously. I am aware that the new statute imposed tight deadlines on the Commission, and I would like to state at the outset that the Commission has done an extraordinary job drafting an extremely complex Notice in a very short timeframe.

I am, however, concerned about two aspects of the Notice. It is my hope that these comments will assist the Commission in its implementation of competitive bidding in a manner that is consistent with the intent of Congress.

My first concern occurs at paragraphs 28 and 29 of the Commission's Notice. The statutory text requires, and the Notice recognizes, that in order for there to be competitive bidding, that the subject spectrum enable subscribers "to receive communications signals" or to "transmit directly communications signals" [emphasis added].

That Congress included the term "directly" was not inadvertent. The term was incorporated into the legislation in order to distinguish between those who subscribe to spectrum-

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based services and others whose use of the spectrum is incidental to some other service. In my view, the term "directly" in this instance in essence requires that subscribers operate a transmitter themselves.

Paragraphs 28 and 29 discuss the Commission's proposal "that licenses used in services as an intermediate link in the provision of a continuous, end-to-end service to a subscriber would be subject to competitive bidding". Inasmuch as these links are incidental to the provision of a different, and not necessarily spectrum-based, service, subjecting these licenses to competitive bidding procedures would be inappropriate.

My second concern relates to the proposed "Big LEO" satellite systems in the Mobile Satellite Service ("MSS"). It is clear to me that these systems will advance important U.S. policy goals, including maintaining America's lead in important technologies and the expansion of the existing telecommunications infrastructure. They will also promote the creation of new jobs throughout the industry and enhance the global competitiveness of the United States in mobile communications technology.

I am concerned, however, that the Commission's limited discussion of the treatment of the pending Big LEO applications in the competitive bidding Notice is an indication that the Commission may be misinterpreting the intent of Congress with respect to licensing Big LEO systems. In its Notice, it appears that the Commission has failed to take notice of important statutory language in the new law, as well as relevant legislative history, which requires the Commission to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means in order to avoid mutual exclusivity in pending application and licensing proceedings, and thereby avoid auctions and lotteries.

As a general proposition, by granting to the Commission the authority to assign licenses by auction, it was never the intent of Congress for auctions to replace the Commission's responsibilities to make decisions that are in the public interest. Rather, the competitive bidding authority was always intended to address those situations where the Commission could not either narrow the field of applicants or select between applicants based upon substantive policy considerations.

The Committee expects the Commission to continue to exercise its responsibilities to determine how spectrum should be used in the public interest and who are the best qualified to undertake that use.

To underscore that auctions are not a substitute for reasoned decision-making, the new statute specifies (at Section

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309(j)(6)(E)) that the Commission is not to abandon its traditional methods of avoiding mutual exclusivity. Congress clearly had the Big LEO proceeding in mind when it added this language to the bill because it believed that mutual exclusivity could be avoided in that proceeding.

A brief review of the relevant legislative history should assist the Commission in its deliberations in both the competitive bidding docket and the Big LEO proceeding. In the original House Report language (House Report No. 103-111, at p. 258) from which this statutory subsection was drawn, the Committee stated:

In connection with application and licensing proceedings, the Commission should, in the public interest, continue to use engineering solutions, negotiation, threshold qualifications, service rules, and other means in order to avoid mutual exclusivity. The licensing process, like the allocation process, should not be influenced by the expectation of federal revenues and the Committee encourages the Commission to avoid mutually exclusive situations, as it is in the public interest to do so. The ongoing NSS (or "Big LEO") proceeding is a case in point. The FCC has and currently uses certain tools to avoid mutually exclusive licensing situations, such as spectrum sharing arrangements and the creation of specific threshold qualifications, including service criteria. These tools should continue to be used when feasible and appropriate [emphasis added].

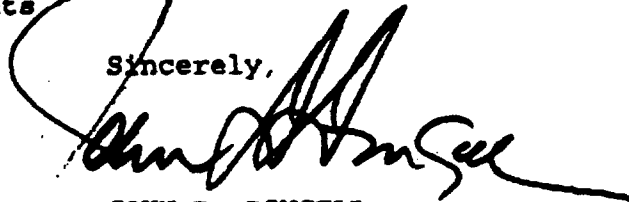
In light of the provisions of the House Report, the final statutory language signed by the President, and the presence of viable spectrum sharing plans, such as the one contained in Motorola Satellite's and Loral Qualcomm's joint submission, it is clear that the Commission has an obligation to attempt to avoid mutual exclusivity among qualified applicants in the Big LEO proceeding. While the contents of paragraph 156 of the Notice may provide a healthy incentive for the various applicants to conclude their negotiated rulemaking successfully, I trust that the Commission is aware of its own responsibilities in this regard.

As I noted at the outset, the Commission's Notice represents an extraordinary effort in a very tight timeframe, and I congratulate you for the job that you have done. I ask that a copy of this letter be made part of the Commission's record in

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this proceeding, and hope that it is useful to you as the Commission deliberates on the appropriate uses of its competitive bidding authority. If I or the Committee staff can be of any assistance to you, please do not hesitate to contact me. I look forward to reviewing your decision, and to receiving your response to these comments

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell", written over a large, loopy flourish that starts under the word "Sincerely," and extends to the right.

JOHN D. DINGELL
CHAIRMAN